S.B.Cr.Misc. Third Bail Appl. No.2046/2007

(Pankaj vs. State of Rajasthan)

Date of order : May 25, 2007

HON'BLE MR.H.R.PANWAR,J.

Dr.S.S.Jodha, for the petitioner.
Mr.Rameshwar Dave, Public Prosecutor.

This is third bail application filed by the petitioner.

Heard learned counsel for the petitioner and the Public Prosecutor for the State.

The first and second bail applications were dismissed on 4.4.2006 and 2.3.2007 respectively as they were not pressed by the learned counsel for the petitioner at that stage.

It is contended by the learned counsel for the petitioner that after rejecting the earlier bail applications as not pressed way back on 4.4.2006 and 2.3.2007, the trial court has examined the material witnesses, however, none of the prosecution witnesses implicates the petitioner.

I have carefully gone through the challan papers and the

statements of the prosecution witnesses.

There are as many as four witnesses of last scene viz. PW.15 Smt. Leela, PW.18 Kundan Singh, PW.22 Suresh Tripathi and PW.23 Piyush, who have been examined by the trial court. However, none of these witnesses supports the prosecution case and they turned hostile. There were two witnesses of seizure of Maruti Van viz. PW.11 Bhagwan Lal and PW.12 Pradeep Lahoti, both these witnesses did not support the prosecution case and turned hostile. Two witnesses viz. PW.13 Kirtan and PW.14 Bharat are the witnesses of the site, however, on being examined in court, they turned hostile. So is the case of PW.19 Bhagwan Lal. PW.20 Motilal is the owner of the Maruti Van and PW.21 Praveen is son of PW.20 Motilal, they also did not support the prosecution case and turned hostile. PW.24 Kantilal is the owner of the STD shop and PW.25 Prakash is the owner of barber shop. These witnesses also did not support the prosecution case and turned hostile. Only evidence available on record is the statement of PW.7 Paresh, a witness to the recovery memo of the gold chain. The occurrence is said to have been of 10.4.2005. As per the recovery memo Ex.P/3, the alleged recovery was made on 13.8.2005.

It is contended by the learned counsel for the petitioner

that even from perusal of the statements of these witnesses, the recovery has also not been established as there are serious material contradictions in the statements of these witnesses. There are large number of prosecution witnesses, who did not support the prosecution case.

Be that as it may, without commenting on the merit of the case, which may prejudice the case of either party, having considered the totality of facts and circumstances of the case and taking into account the oral arguments advanced by both the parties, I think it just and proper to enlarge the accused petitioner on bail.

Accordingly, this bail application filed under Sec. 439 Cr.P.C. is allowed and it is directed that petitioner Pankaj s/o Nathulal Jain be released on bail in FIR No.109/2005, P.S. Dhambola, Distt. Udaipur provided he furnishes a personal bond in a sum of Rs.20,000/- with two sound and solvent sureties in the sum of Rs. 10,000/- each to the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the completion of the trial.

(H.R.PANWAR),J.

m.asif/-